

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGORY TABAREZ,

Plaintiff,

No. CIV S-04-0360 LKK EFB P

vs.

DIANA BUTLER, et al.,

Defendants.

ORDER

Plaintiff is a prisoner without counsel seeking relief for alleged civil rights violations. *See* 42 U.S.C. § 1983. On March 29, 2007, the court modified the January 25, 2006, scheduling order to permit defendant Max Lemon an additional 30 days to take plaintiff's deposition. On April 2, 2007, defendant Max Lemon filed a motion to modify the time set in the March 29, 2007, order to again extend the time for taking plaintiff's deposition.

A schedule may be modified upon a showing of good cause. Fed. R. Civ. P. 16(b). Good cause exists when the moving party demonstrates he cannot meet the deadline despite exercising due diligence. *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). Defendant asserts that his counsel had a trial April 30, 2007, and that counsel spent the preceding week preparing for it. He also asserts that counsel for the other defendants had a trial the week of April 16, 2007. Thus, the scheduling conflicts made it impossible to take plaintiff's

1 deposition within the 30 days the court granted.

2 Accordingly, defendant Lemon's April 2, 2007, request is granted and he has 45 days
3 from the date this order is signed to notice and take plaintiff's deposition. The court does not
4 anticipate that another modification will be necessary.

5 So ordered.

6 Dated: May 21, 2007.

7 
8 EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE